

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NARISHA RENEE BAAS,
JONATHAN BAAS, CASSANDRA RENEE
BAAS, and MARK STEVEN DANIEL ROUX,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

DENISE HAMPTON-ROUX BAAS, RICHARD
BAAS, MARK ROUX, and JOHN GADZINSKY,

Respondents.

In the Matter of ALEXANDRIA ELLEN YUN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

TAMERA YUN and KYU HO YUN,

Respondents.

UNPUBLISHED
January 8, 2008

No. 272343
Oakland Circuit Court
Family Division
LC No. 03-677201-NA

No. 272344
Oakland Circuit Court
Family Division
LC No. 05-715460-NA

Before: Wilder, P.J., and Cavanagh and Hood, JJ.

PER CURIAM.

In these consolidated appeals, the Department of Human Services (DHS) appeals by leave granted from orders entered in two child protection proceedings, “after contempt review,” that require the DHS to have a court liaison on site in family court offices, and to hire a legal

liaison. Enforcement of the orders has been stayed pending resolution of these appeals. We vacate the portions of each order that require DHS to create and staff the liaison positions.

I

These consolidated appeals arise out of a March 2, 2006, contempt order entered by the trial court in two separate child protection proceedings. In Docket No. 272343, the trial court entered the contempt order during post-termination review proceedings in a case involving the children of respondents Denise and Richard Baas, Mark Roux, and John Gadzinsky (hereinafter the “Baas” case).¹ The trial court found the DHS in contempt for not fully complying with its prior order requiring monthly sibling visits, and for not commencing the adoption process for one child until March 1, 2006. The DHS was ordered to take immediate steps to provide sibling visitation and to make regular court reports. In Docket No. 272344, the trial court entered the contempt order during periodic review proceedings in a case involving respondents Tamera and Kyu Yun, whose two children had been made temporary court wards (hereinafter the “Yun” case). The trial court found that the DHS failed to timely comply with its prior order requiring the Yun children to attend counseling. The trial court ordered the DHS to take immediate steps to provide necessary psychological or psychiatric services and to make regular court reports.

The trial court’s March 2, 2006, contempt order further stated that the DHS was in “continuing contempt” for not following orders of the Oakland Circuit Court, Family Division, and required the DHS to take five specific actions to cure its contemptuous behavior. Specifically, the DHS was ordered to: (1) assign sufficient supervisors to review the actions of its caseworkers; (2) report monthly on the status of open cases; (3) immediately fill vacancies so that a full complement of caseworkers are on staff; (4) include specific dates for completing tasks in its reports; and (5) remove a specific caseworker from all cases in the Oakland Circuit Court, Family Division. The order also appointed an expert witness pursuant to MRE 706 to ensure the DHS’s compliance with the order.

The trial court later modified the March 2, 2006, contempt order by eliminating the requirement that the caseworker be removed from all cases. The court also later found that the DHS had cured the contempt in the Baas and Yun cases, and terminated the expert witness’s appointment. Despite its determination that the contempt in the Baas and Yun cases had been cured, the court continued to hold in-chambers meetings regarding the contempt order. After one such meeting, on July 25, 2006, the trial court entered the “after contempt review” orders at issue here in the Baas and Yun cases. In each order, the trial court ordered the DHS to have a court liaison in family court offices by July 31, 2006, and to hire a legal liaison by October 16, 2006.

When the DHS later moved to stay execution of the liaison requirements, the DHS’s counsel questioned the trial court’s authority to order the creation of the positions, but conceded that the DHS had taken the position in an in-chambers meeting that it would fill the positions by

¹ Respondents Denise Baas and Mark Roux appealed the termination of their parental rights to their respective children, and this Court affirmed the termination of their parental rights in *In re Baas*, unpublished opinion per curiam of the Court of Appeals, issued September 14, 2006 (Docket Nos. 267534 & 267535).

specific dates and did, in fact, create the court liaison position. In denying the motion for stay, the trial court acknowledged that the DHS's counsel had raised this issue in off-the-record discussions, but took the position that its orders reflected agreements made in chambers and a stipulation with respect to the dates for filling the liaison positions.

II

On appeal, the DHS argues that the trial court lacked the authority to compel creation of the liaison positions pursuant to its contempt powers. It further argues that it never stipulated to the liaison positions, and that the trial court's attempt to compel it to create those positions violates the constitutional separation of powers.

We first consider the DHS's claim that the trial court lacked authority to impose new contempt sanctions in the July 25, 2006, "after contempt review" orders, because it had already determined that the civil contempt found in the March 2, 2006, order was cured. We agree with the DHS that contempt sanctions are unnecessary when the underlying contempt has been cured. "[T]he primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 708; 624 NW2d 443 (2000). "A proper civil contempt proceeding seeks to coerce compliance with an act commanded by prior court order, or to compensate the complainant for actual loss. Only where the contemnor, at the time of the contempt hearing, is in violation of an order, is a coercive sanction permissible." *In re Contempt of Dougherty*, 429 Mich 81, 111; 413 NW2d 392 (1987).

Although the trial court found that the specific contempt in the Baas and Yun cases had been cured, it is apparent from the record that the court's review after this finding related to its additional determination in the March 2, 2006, order that the DHS was in "Continuing Contempt for its continued failure to follow Orders of this Court, being the Oakland County Circuit Court Family Division." The March 2 order imposed a number of specific duties that were to continue indefinitely, including a requirement that the DHS ensure that "all orders of this Court are followed and report monthly on the status of each open case, the first reports to be filed on or before May 15, 2006."

Because the trial court's finding of "continuing contempt" and the duties imposed were not directed at coercing compliance with prior orders in any specific case, but rather were an effort to prevent future violations of court orders in a number of other child protection cases that might be filed in the Oakland Circuit Court, Family Division, we question the trial court's authority to use its civil contempt powers to impose those duties. But the DHS is not challenging the March 2, 2006, order. Nonetheless, we conclude that the trial court exceeded its legal authority when it attempted to use its civil contempt powers to impose the additional duties to create and staff the liaison positions through the July 25, 2006, orders in the Baas and Yun cases. *In re Contempt of Dougherty*, *supra* at 111.

The DHS further asserts that it did not stipulate to entry of the July 25, 2006, orders. Although an appellate court may not speculate on what occurred in chambers without a stenographic record, see *Rockwell v Hillcrest Country Club, Inc*, 25 Mich App 276, 288-289; 181 NW2d 290 (1970), the record of the August 23, 2006, hearing on the DHS's motion for a stay reflects that counsel for the DHS had opposed entry of the July 25, 2006, orders during the in-chambers meeting, and the trial court acknowledged that counsel had raised this issue in

discussions. Further, the orders themselves do not indicate that they were entered by stipulation. On this record, we can only conclude that while the DHS may have been agreeable to creating and staffing liaison positions by specific dates, it did not agree to bind itself to do so pursuant to a court order. Thus, the trial court erred to the extent that it treated the July 25, 2006, orders, in substance, as stipulated orders entered in contempt proceedings.

Furthermore, there is no basis in the record for concluding that the trial court acted on some authority, independent of its contempt powers, to order the DHS to create and staff the liaison positions. The record indicates only that the trial court entered the July 25, 2006, orders in the course of exercising its jurisdiction in two separate child protection proceedings under the juvenile code, MCL 712A.1 *et seq.* Regardless of whether children are temporary or permanent court wards, a trial court is authorized to make decisions regarding actions to be taken on behalf of the children. See MCR 3.973(A); MCR 3.978(C); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). The DHS is required to assist the trial court through the development of a case service plan. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); see also MCL 600.1043(d) (agencies that provide assistance to juveniles shall provide assistance to the family division of circuit court in accordance with the court's jurisdiction). The trial court has broad power to address concerns that arise under a case service plan when conducting periodic reviews in child protection proceedings. See *Martin v Children's Aid Society*, 215 Mich App 88, 98; 544 NW2d 651 (1996).

Here, however, the trial court did not tailor the July 25, 2006, orders to any particular needs in the Baas and Yun cases. Instead, the court used these cases as vehicles for ordering the DHS to create and staff liaison positions to provide liaison assistance for all child protection cases coming within the jurisdiction of the Oakland Circuit Court, Family Division. We agree with the DHS that, in this context, the trial court's action implicates the separation of powers under Const 1963, art 3, ¶ 2, because employment decisions fall within the DHS's own administrative authority. Although the constitutional separation of powers does not preclude some overlap of responsibilities and powers, "[t]he power of each branch of government within its separate sphere necessarily includes managerial administrative authority to carry out its operations." *Judicial Attorneys Ass'n v State of Michigan*, 459 Mich 291, 296-297; 586 NW2d 894 (1998).

For these reasons, we vacate the portions of the trial court's July 25, 2006, orders that require the DHS to create and staff the liaison positions.

Affirmed in part and vacated in part.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood